

MEMORANDUM FOR: National Foreign Intelligence Council

FROM:

Director, Intelligence Community Staff

SUBJECT: Report of Intelligence Community Views on Needed
Revisions to Executive Order 12036

1. This memorandum presents consolidated Intelligence Community views for consideration by the National Foreign Intelligence Council (NFIC) on needed revisions to Executive Order (EO) 12036, "United States Intelligence Activities." These have been developed in response to the Acting DCI's request in NFIC-A-2, dated 17 March 1981. This report has been coordinated with an ad hoc working group representing the members of NFIC and sets forth preliminary department and agency positions on revisions proposed by other members of the Intelligence Community.

2. The report is divided into three parts. The first part contains proposed changes to EO 12036 on which there appears to be disagreement among NFIC member agencies or which are considered to raise significant policy issues or questions. The second part of the report contains proposed changes which do not appear to raise significant policy issues or disagreement within the Intelligence Community, or are of a technical nature. The third part of the report consists of a spread sheet that compares the present language of EO 12036 with proposed or possible new provisions based on the changes which have been proposed. It should be noted that sections 1-1 through 1-3 of EO 12036 are not addressed in this report. The DCI has proposed and forwarded

separately to the President suggested revisions which encompass sections 1-1 (National Security Council), 1-2 (NSC Policy Review Committee), and 1-3 (NSC Special Coordination Committee). Those proposed revisions have been embodied in a draft National Security Decision Directive No. 2, dated 25 February 1981. Thus, those sections are not considered herein. Furthermore, the report does not address Section 2 of Executive Order 12036 or any of the other provisions previously considered by NFIC during its review of restrictions on intelligence activities.

PART I. SIGNIFICANT CHANGES/ISSUES

Issue 1: Should the NFIB/NFIC be established by Executive Order?

Discussion: Section 1-4 of EO 12036 establishes the NFIB for the purpose of advising the DCI on intelligence matters and specifies its membership and responsibilities. However, subsection 1-601(m) authorizes the DCI to establish committees and advisory groups to assist in the execution of his responsibilities. Thus, it may be inappropriate to establish the membership and duties of the DCI's most important advisory bodies in an Executive Order, which is more difficult to change than a DCI directive. Since the NFIB or any similar group serves the DCI, he should be free to change its membership and responsibilities.

Community Positions: State and Justice appear to favor establishment of the NFIB/NFIC in Executive Order.

*Recommended
for approval*

Issue 2: Should the Executive Order require the DCI to coordinate national foreign intelligence activities with the Secretary of State?

Discussion: The Department of State has suggested, that as a corollary to the Secretary of State's responsibilities in sections 1-903 and 1-906, that the DCI be required to:

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coordinate with the Secretary of State to ensure that national foreign intelligence activities are consistent with U.S. foreign policy objectives and interests.

It is unclear whether such a requirement is necessary. Under current provisions of the Executive Order, and as head of CIA under the National Security Act of 1947, the DCI performs his duties under and is responsible to the National Security Council. Furthermore, as proposed in the draft National Security Decision Directive No. 2, the Deputy Secretary of State is a member of the SIG-I, which establishes intelligence policy and reviews and approves designated intelligence activities.

Issue 3: Should the DCI's authority with respect to the National Foreign Intelligence Program budget be streamlined?

Discussion: It has been proposed by CIA that section 1-602 of EO 12036 be reworded as follows (see spread sheet for comparison with the current section 1-602):

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Provide guidance for National Foreign Intelligence Program and budget development to Intelligence Community program managers and department and agency heads;

Develop, with the advice of the departments and agencies concerned, the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget;

Present and justify the National Foreign Intelligence Program budget to the Congress;

Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accord with guidelines established by the Office of Management and Budget.

Elimination of the phrase "full and exclusive authority for approval of the NFIP budget" in the stem of section 1-602 and similar language in section 1-602(f) is stylistic and is not intended to effect any substantive change.

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The proposed modification of section 1-602 appears to raise the following sub-issues:

Sub-Issue 3A: Should the requirement for consultation with the head of any department or agency affected by reprogramming and with the Congress be eliminated?

Discussion: Section 1-602(f) of Executive Order 12036 authorizes the Director of Central Intelligence to reprogram NFIP funds in accordance with OMB guidelines, but "only after consultation with the head of the department affected and appropriate consultation with Congress." Elimination of these formal consultation requirements may not result in any change in practice. The replacement language for Section 1-602 proposed by CIA permits the DCI to act on "requests" for reprogramming and may imply consultation with the heads of affected departments and agencies. The language requiring consultation with the Congress may be unnecessary because of the statutory requirement contained in section 103 of this Intelligence Authorization Act for Fiscal Year 1981. That provision requires prior notification of the appropriate committees by the DCI or the Secretary of Defense for any obligation or expenditure of funds for any program in an amount in excess of the amount specified for that program in a classified schedule of authorizations. However, it is unclear whether this notification requirement is coextensive with the consultation requirement in section 1-602(f).

Community Positions: The CIA supports this proposal.

Sub-Issue 3B: Should the Order be amended to require that the DCI develop a consolidated NFIP budget "with the advice of an appropriate Intelligence Community advisory group" vice "NFIB?"

Discussion: Section 1-601(c) of EO 12036 requires the DCI to develop a consolidated budget "with the advice of NFIB and the departments and agencies concerned." It has been proposed that the budget be developed with the advice of an appropriate Intelligence Community advisory group, without naming the NFIB or any other group in the Order. This change may be appropriate in view of the fact that the DCI has established a National Foreign Intelligence Council (NFIC) by his memorandum to the Intelligence Community of 9 March 1981 and has assigned to it the responsibility to advise and assist him concerning the NFIP budget.

Community Position: This proposal is supported by the IC Staff and is consistent with the language proposed by CIA.

Issue 4: Should the DCI be permitted to establish minimum security standards for the protection of intelligence sources and methods and foreign intelligence and counterintelligence?

Discussion: Sections 1-604 and 1-601(i) of EO 12036 respectively require the DCI to ensure the development of programs to protect sources and methods and to establish common security and access standards for foreign intelligence systems information and products. It has been proposed that these

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authorities be changed to permit the DCI to establish minimum security standards for the protection of such information.

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Currently, different security standards govern persons in the Intelligence Community who have access to the same intelligence information. In the area of Sensitive Compartmented Information (SCI), however, there are minimum requirements that do not preclude agencies from having higher standards. Section 1-601(i), which implements to some extent the responsibility of the DCI to protect intelligence sources and methods, has been interpreted as only providing the DCI with a narrow mandate to take necessary steps for the protection of SCI. The proposed amendment would explicitly extend the DCI's mandate beyond SCI to include all intelligence, counterintelligence, and sources and methods information. The proposed amendment would only permit the DCI to establish minimum standards and would provide that these standards and procedures would be applicable only to the extent not prohibited by statutory requirements applicable to any department or agency.

Community Positions: The CIA supports this proposal.

Sub-Issue 4A: Should the DCI be required to develop specific means to protect intelligence sources and methods from unauthorized disclosure?

Discussion: Section 1-604 of EO 12036, in requiring the DCI to ensure that programs are developed which will protect intelligence sources and methods, limits that responsibility within the

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United States to (a) using lawful means to protect against disclosures by present or former employees of the CIA and Office of the DCI or by persons or organizations presently or formerly under contract with those entities, and (b) providing policy guidance and technical assistance to other departments and agencies regarding protection of intelligence information. It has been proposed that section 1-604 be eliminated and replaced with a charge that the DCI develop, in accordance with applicable law and the Order, specific means to protect intelligence sources and methods from unauthorized disclosure.

Community Positions: The CIA supports this proposal.

Issue 5: Should certain authorities of the DCI apply only to foreign intelligence, thus excluding counterintelligence?

Discussion: Sections 1-601(a) and (e) respectively require that the DCI act as primary advisor to the President and the NSC on national foreign intelligence, and that the DCI promote the development and maintenance of services of common concern by foreign intelligence organizations. Because the definition of "foreign intelligence" excludes counterintelligence (except for information on international terrorist activities), the DCI authorities and responsibilities covered in these sections do not encompass counterintelligence or counterintelligence organizations. To remedy this deficiency, it has been proposed that the word "foreign" be deleted from those sections. Additionally, should these changes be deemed appropriate, it would also seem

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desirable to eliminate the word "foreign" in other contexts, e.g., section 1-703, which requires senior officials of the Intelligence Community to "contribute in their areas of responsibility to the national foreign intelligence products."

my This proposal would conform the DCI's duties in EO 12036 with his designation in draft National Security Decision Directive No. 2 as principal advisor on intelligence matters (including counterintelligence). Thus, there appears to be no reason why he should not also promote development and maintenance of services of common concern by any intelligence organization. Similarly, senior Intelligence Community officials should contribute, as appropriate, not only to national foreign intelligence products, but to counterintelligence products as well.

Community Positions: This proposal is supported by the Acting SA/DCI/CI.

Issue 6: What standard should be adopted for reporting questionable activities to the Executive Branch's intelligence oversight body?

Discussion: Section 3 of EO 12036 establishes the Intelligence Oversight Board and specific duties and responsibilities for the Board, Inspectors General and General Counsel, and the Attorney General with respect to oversight of intelligence activities. It has already been determined by the Administration to reestablish the President's Foreign Intelligence Advisory Board (PFIAB) and to fold into that Board the IOB's duties.

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Draft language establishing PFIAB and an Intelligence Oversight Committee thereof is contained in the spread sheet opposite Section 3 of EO 12036.

Presently, EO 12036 requires reporting to the IOB of any intelligence activity that raises questions of legality or propriety. This is an extremely broad standard, and interpreted literally would require reporting of dozens and, perhaps, hundreds of intelligence activities that involve, to varying degrees, questions of legality or propriety. Furthermore, determinations as to propriety are often difficult to make and depend in each case on the standards and conscience of the person making the judgment.

It should be possible to formulate a different reporting standard which is both clearer and possible to meet. For example, the standard might be:

"to report intelligence activities which violate the Constitution or laws of the United States, Executive Orders, Presidential Directives, or departmental or agency rules or regulations, or which raise serious questions of propriety;"

"to report intelligence activities which raise serious questions of legality or propriety;" or

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"to report intelligence activities which violate the Constitution or laws of the United States, Executive Order, Presidential Directives, or departmental or agency rules or regulations, or which raise serious questions of legality or propriety."

Obviously, other formulations of the standard may be possible.

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Community Positions: Treasury's position is that activities should be reportable only if both the General Counsel and Inspector General believe the activity to be illegal or improper. Justice has raised the question of whether reporting questions of "propriety" serves any useful purpose.

Issue 7: Should the definition of "counterintelligence" be amended to eliminate the current exclusion of personnel, physical, document and communications security programs?

opposed
Discussion: The term "counterintelligence" as defined in section 4-202 of EO 12036 encompasses information gathered and activities conducted to protect against a range of activities conducted for or on behalf of foreign powers, organizations or persons, but excludes personnel, physical, document and communications security programs. One major effect of removing this exclusion would be to permit the Executive Branch body which establishes counterintelligence policy to address personnel, physical, document and communications security issues. Such a change would not appear to affect current jurisdictional arrange-

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ments with respect to the conduct of traditional counterintelligence activities, but it may, because of the coordination requirements for CI activities in the United States, result in an unacceptable broadening of the range of activities (e.g., security investigations and activities) which would have to be coordinated with the FBI or would be subject to procedures agreed to by the Attorney General. These problems could, perhaps, be solved in the sections that deal with the coordination and approval of CI investigations and activities.

Community Positions: This proposal is favored by the Acting Special Assistant to the DCI for Counterintelligence.

Issue 8: Should the statement excluding tactical intelligence activities from the NFIP be reworded?

Discussion: Section 4-210(e) of EO 12036 excludes from the NFIP:

Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

It has been proposed that this subsection be reworded as follows:

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Activities whose primary purpose is to
provide intelligence support to the ~~to~~
~~acquire the intelligence required for the~~
~~planning and conduct of~~ tactical operations
by the United States military forces are not
included in the National Foreign Intelligence
Programs.

Community Positions: The CIA supports this proposal.

PART II. MINOR ISSUES/TECHNICAL CHANGES

Issue 9: Should the National Intelligence Tasking Center (NITC)
be disestablished?

Discussion: The NITC was established by section 1-5 of EO 12036 to provide the Director of Central Intelligence (DCI) with a means of effectively translating the intelligence needs of senior decision-makers into tasking of national intelligence collection systems. The original concept of a 24-hour, seven-day a week NITC, staffed by Intelligence Community civilian and military personnel was never achieved due to the lack of manpower and sufficient funding, and due to the overlap in requirements/tasking responsibility with the parallel DCI Committee structure. Moreover, the separation of the tasking responsibilities of the DCI Committee structure from related responsibilities for evalua-

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tion, protection of intelligence sources and methods, and foreign release has been viewed as neither appropriate nor efficient. Therefore, the NITC has never existed as a real entity. The Collection Tasking Staff of the DCI has merely exercised the functions of the NITC on behalf of the DCI and in addition to its other assigned functions.

Disestablishment of the NITC and retention of its authorities by the DCI would end this fiction and permit the DCI to exercise the tasking and other of the NITC functions through any mechanism which he determined to be appropriate. This would also eliminate the need for a provision institutionalizing the transfer of NITC authorities from the DCI to the Secretary of Defense. If the President should ever desire to accomplish a transfer of those authorities, he could so direct as the need arises.

Community Positions: The elimination of the NITC as an organizational entity is supported by the Central Intelligence Agency (CIA), the State Department, the National Security Agency (NSA), and the Intelligence Community Staff (IC Staff). The Justice Department acknowledges that the NITC provisions of EO 12036 may need revision to reflect changes in the IC Staff. The CIA, the State Department, and the IC Staff also have proposed language (see spread sheet) concerning specific authorities which should be retained by the DCI if the NITC is abolished. The

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State Department would like DCI advisory tasking authority to be retained. The IC Staff would like all NITC tasking authorities to be retained by the DCI and implemented by the IC Staff.

Sub-Issue 9A: Should the Order permit the DCI to establish appropriate mechanisms to develop guidance for the Intelligence Community based on NSC national foreign intelligence objectives and priorities?

Discussion: Section 1-502(a) of EO 12036 provides that the NITC shall transmit national foreign intelligence requirements and priorities developed by the PRC into specific collection objectives and targets for the IC. It has been proposed that this authority be modified to (a) permit the DCI to establish mechanisms to carry it out, (b) change "requirements" to "objectives," (c) substitute the NSC for the PRC, and (d) substitute "guidance" for "objectives and targets."

The proposed changes do not appear to significantly alter the authority that would be exercised by the DCI. Authority to "establish mechanisms" is implicit in any general statement of functions and responsibilities. The change from "requirements" to "objectives" appears to be stylistic. Substitution of "NSC" for "PRC" is technical. The substitution of "guidance" for "objectives and targets," however, appears intended to grant IC collectors greater flexibility to accomplish necessary collection within "guidance" provided by DCI "mechanisms." Thus, IC entities would apparently be able to set their own "objectives and targets" within that guidance.

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Community Positions: The CIA supports this proposal.

Issue 10: Should the DCI's responsibilities for development of objectives and guidance for the Intelligence Community concerning future needs and for formulation of policies concerning intelligence arrangements with foreign governments be subject to NFIC/NFIB advice?

Discussion: Section 1-601(d) of EO 12036 requires the DCI to develop, consistent with requirements and priorities established by the PRC, objectives and guidance for the Intelligence Community to enhance capabilities to meet expected future needs for national intelligence. Section 1-601(g) requires the DCI to formulate policies concerning intelligence relationships with foreign governments and to coordinate such relationships between Intelligence Community agencies and foreign intelligence or internal security services. It has been proposed that these responsibilities be subject, respectively, to NFIC and NFIB advice.

Section 1-601(d) implicitly provides the DCI with authority to ensure the conduct of research, development and planning necessary for the continuation and improvement of national foreign intelligence collection, production and dissemination. There is no current requirement in EO 12036 that this DCI responsibility be performed with the advice of NFIB although, as a practical matter, NFIB's (or the departments and agencies concerned-see Issue 3) advice on the National Foreign Intelli-

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gence Program (NFIP) budget provides a vehicle for doing so. It may not be appropriate, however, to require formally that this responsibility be subject to NFIC advice since it is not clear that NFIB/NFIC will be established in the Order, and to require such advice in all cases may amount to bureaucratic layering since other Community mechanisms provide an opportunity for NFIB agencies to make their views known on these issues.

The same reasons may also make it inappropriate to require NFIB advice with respect to the DCI's responsibility to formulate policies concerning and to coordinate intelligence relationships with foreign governments. While it is true that one duty of NFIB under section 1-401 of EO 12036 is to advise the DCI concerning "arrangements with foreign governments on intelligence matters," the wording of section 1-601(g) makes it clear the DCI is free to perform these duties with or without the advice of NFIB in accordance with the DCI's view of the desirability of such advice. Furthermore, it may be impractical to require the advice of community mechanism with respect to the DCI's coordination responsibility.

Community Positions: This proposal is supported by the Department of State.

Issue 11: In developing objectives and guidance for improving capabilities to respond to future needs, should the DCI be required by the Order to be consistent with requirements and priorities established by the PRC?

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Discussion: Section 1-601(d) of EO 12036 requires the DCI to develop, "consistent with requirements and priorities established by the PRC," objectives and guidance for the IC to enhance capabilities to meet expected future needs for national intelligence. It has been proposed that the words "consistent with the requirements and priorities established by the PRC" be eliminated.

Community Positions: The CIA supports this proposal.

Issue 12: Should the responsibility of Intelligence Community agencies to conduct programs to protect against overclassification of foreign intelligence information be changed to require programs to protect such information through proper classification?

Discussion: Sections 1-601(h) and 1-712, respectively, require the DCI and senior officials of the Intelligence Community to conduct programs to protect against overclassification of foreign intelligence information. The thrust of these sections is to prevent perceived abuse of the classification system. Like much of EO 12036, the tone of these sections is both negative and condemnatory. It has been proposed that the sections be recast in language that would accomplish their objective, but reflect a more positive tone (see spread sheet). It is conceivable, of course, that any changed sections could be viewed as an attempt to return to the "good old days" and could be subject to attack on that basis.

Consideration might be given to elimination of section 1-601(h), since its requirement is encompassed in section 1-712.

Community Positions: These amendments are supported by NSA.

Issue 13: Should the responsibility of the DCI to participate in the development of procedures required to be approved by the Attorney General be eliminated?

Discussion: Section 1-601(j) of EO 12036 requires the DCI to participate in the development of procedures required to be approved by the Attorney General governing the conduct of intelligence activities. This responsibility could literally be construed as requiring the DCI to participate in the development of such procedures for any agency of the Intelligence Community or for CIA alone since that is the only entity he heads. In practice, the DCI has not participated in the development of procedures for other agencies. In any event, unless there is a desire that the DCI participate in the development of all procedures, this section would seem to be unnecessary since section 2-201 requires establishment of procedures by all agency heads and no agency head other than the DCI is subject to a separate provision requiring participation in the development of procedures.

Community Positions: This issue has been raised by the Department of Justice.

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Issue 14: Should section 1-606 of the Order, which requires that the CIA provide departments and agencies with access to all CIA intelligence relevant to their national intelligence needs, be deleted?

Discussion: The deletion of section 1-606 of the Order has been proposed because of the apparent overlap with sections 1-601(a) and 1-603 of the Order. Section 1-601(a) directs the DCI to provide "other officials in the Executive Branch with national foreign intelligence." Section 1-603 gives the DCI full responsibility for the "dissemination of national foreign intelligence." However, close examination of these sections indicates that their overlap with section 1-606 is far from complete.

While both sections 1-601(a) and 1-603 concern "national foreign intelligence," section 1-606 requires the DCI provide access to all "intelligence" developed by the CIA. Intelligence includes foreign intelligence (not limited to "national" foreign intelligence) and counterintelligence. While the requirement under section 1-606 is to provide intelligence which is relevant to the "national intelligence needs of departments and agencies," that clearly appears to encompass more than just "national foreign intelligence." Thus, section 1-606 appears not to be surplusage, and, if it is deleted, departments and agencies may regard the deletion as an attempt to deny them access to intelligence which they view as relevant to their needs.

Community Positions: The CIA supports this proposal.

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Issue 15: Should there be an explicit reference in the Order to the duties and functions of the Intelligence Community (IC) Staff?

Discussion: Though the IC Staff was created by the DCI and receives an annual authorization and appropriation from Congress, the current duties and functions of the IC Staff are not comprehensively spelled out in any formal document. The Order would be an appropriate vehicle for setting forth the duties and functions of the IC Staff in a clear and comprehensive fashion. However, if the duties and functions of the IC Staff are set forth in the Order, the DCI would be precluded from making any changes in those duties and functions without obtaining Presidential approval to amend the Order. Thus, the DCI would lose the flexibility to unilaterally change the duties and functions of the IC Staff, whether or not he determined such changes to be necessary or advisable.

CIA has proposed addition of the following language to the Order, which may accomplish this objective without creating any specific organizational entity:

[the DCI shall:] Maintain, subject to the direction, control and management of the DCI, staff elements to coordinate the national foreign intelligence program and budget and national foreign intelligence activities.

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Issue 16: Should the Drug Enforcement Administration (DEA) be removed from the Intelligence Community?

Discussion: DEA is a law enforcement agency and its functions and interests are almost entirely law enforcement in nature. Though the intelligence elements of DEA are made a part of the Intelligence Community by the Order, practically speaking, DEA has not been treated as such and the Order has not been implemented in that regard. In addition, the Justice Department indicates that because of DEA's identification as an intelligence agency, DEA's interests abroad have been impaired. Thus, DEA appears to be in the position of being harmed more than helped by its inclusion in the Intelligence Community. If DEA were removed from the Intelligence Community, DEA would still be able to coordinate its information-gathering abroad with the collection activities of the Intelligence Community. Moreover, DEA would still be able to maintain a relationship between its analysis and production elements and those of the Intelligence Community. However, absent membership in the Intelligence Community, it is unclear whether or not DEA activities would be subject to the restrictions of the Order which, of course, apply only to intelligence activities.

Community Positions: The Justice Department supports removing DEA from the Intelligence Community.

Issue 17: Should section 3-4 of the Order be amended to reflect the oversight provisions of current law?

Discussion: In Title V of the Intelligence Authorization Act for FY 1981 (50 U.S.C. 413), a statutory framework for legislative oversight was enacted into law. This framework sets forth the responsibilities of the Intelligence Community and the Intelligence Committees of the Congress in all oversight matters. In order to conform section 3-4 of the Order to the oversight provisions of the new law, section 3-4 could be amended in several different ways.

First, section 3-4 could be replaced by language identical to 50 U.S.C. 413. Second, section 3-4 could be amended to merely reference 50 U.S.C. 501 in the following manner:

Section 3-4. Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments and agencies within the Intelligence Community to cooperate with and assist the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, §501.

Third, section 3-4 could be deleted in its entirety, because it has been superseded by 50 U.S.C. 413.

Issue 18: Should section 4-2 of the Order be amended to adopt the definitions of "communications security" and to add the definition of "telecommunications" proposed by NSA?

Discussion: NSA has proposed that the current definition of "communications security" be replaced by the definition of "communications security" contained in the National Communications Security Directive (NCSD) (see spread sheet). To supplement the NCSD definition, NSA also has proposed that the NCSD definition of "telecommunications" be added to section 4-201. The NCSD definition of "communications security" appears to be more explicit in delineating the matters related to communications which would be covered by the definition. In particular, the NCSD definition would make it clear that electrical systems security and physical security would fall within the definition. Similarly, the NCSD definition of "telecommunications" would make it clear that electrical, electromagnetic, electro-mechanical, and electro-optical means of communications would be covered by the definition.

Issue 19: Should inclusion of military and FBI components in the definition of "Intelligence Community" be limited to "national foreign" intelligence elements?

Discussion: Section 4-207(f) of EO 12036 defines the Intelligence Community to include, among other entities, "the intelligence elements of the military services and the FBI." It has been suggested that only the "national foreign" intelligence

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elements of the military and the FBI should be within the definition so as to make it clear that domestic law enforcement intelligence elements are not included. However, it may not be possible to identify with precision which elements of the FBI and military services, if any, are strictly "national foreign" intelligence elements. Furthermore, this change may be unnecessary to accomplish its stated purpose, because a proposed modification to section 2-102 makes it clear that nothing in the Executive Order is intended to affect the law enforcement responsibilities of any department or agency.

Issue 20: Should a definition of the term "coordination" be added to the Executive Order?

Discussion: EO 12036 requires certain activities to be coordinated by or with specified agencies or officials, or to be conducted "in coordination with such officials or agencies." Consequently, it has been suggested that the following definition be added to the Order:

"Coordination" means the process of eliciting comments prior to undertaking a proposed action. The term implies that no such action will be taken so long as the party with whom the action in question is raised continues to have objections which cannot be resolved.

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It is not clear that the above definition of "coordination" would be adequate or acceptable for all uses of the word (or its other forms) throughout the Executive Order. For example, it would not seem to be appropriate to subject the DCI responsibility in section 1-501 for "coordinating and tasking national foreign intelligence collection activities" to a requirement that would prevent action unless all involved parties agree. In addition to section 1-501, "coordination" (or one of its forms) is mentioned in the following sections: 1-601(g); 1-801, 804, 805 and 807; 1-904; 1-1104; 1-1201(a) and (c) and 1204(a) and (b); 1-1401 and 1402; and 1-1503. It may be preferable to continue to perform the functions and duties described in these sections in accordance with the practice and procedures which have been developed through experience with EO 12036. However, if a specific problem has developed with respect to a section of the Order requiring coordination, that section could be addressed separately as an issue, or resolved in a drafting history.

Community Positions: The FBI supports adoption of a definition of "coordination."

Issue 21: Should a definition of "senior officials of the Intelligence Community" be added to the Executive Order?

Discussion: Section 1-7 of EO 12036 assigns numerous responsibilities to senior officials of agencies within the Intelligence Community. However, it is unclear who such officials are beyond the heads of organizations specified in the

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definition of Intelligence Community in section 4-207. It would seem to be desirable to eliminate this ambiguity, but that end might be more easily accomplished by making section 1-7 applicable to "heads of agencies within the Intelligence Community."

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